

## 1428 – CONFIDENTIALITY AND RELEASE OF INFORMATION

CHANGE # **06-2008**

July 2008

### I. INTRODUCTION

Concern for confidentiality exists throughout the social services **delivery system**. However, **system of care emphasizes interagency collaboration**. The purpose of this section is to **provide guidance surrounding collaboration with the understanding that** the provision of child protective services (CPS) involves responsibility for the sensitive management of confidential information.

The rationale for stringent confidentiality rules in CPS is concern for the protection of the child. CPS records contain detailed information about child maltreatment, which may include graphic documentation received during CPS assessment activities and verbatim documentation of the child's version of maltreatment. Information provided by the initial reporter, supportive statements from collateral contacts, and other such information is collected as a result of a thorough CPS assessment by the agency. Families have a right to privacy. More critically, the child has a right to protection from public disclosure of information learned in the course of the CPS assessment. [North Carolina General Statute \(N.C.G.S.\) § 7B-2901, subsections c., d., h., and i.](#), address the confidentiality of protective services records for children in the custody of the Department of Social Services or under placement by the court. [N.C.G.S. §108A-80](#) **addresses confidentiality of all social services records**.

The North Carolina Administrative Code ([10A NCAC 70A .0113](#)) specifically defines the conditions under which a director may allow access to a child's protective services record.

### II. INTERAGENCY SHARING OF INFORMATION ABOUT JUVENILES

[N.C.G.S. § 7B-302 \(a\)](#) states that the Department of Social Services (DSS) shall disclose confidential information to any federal, State, or local governmental entity or its agent needing confidential information to protect a juvenile from abuse and neglect.

This, **along with** [N.C.G.S § 7B-302 \(e\)](#), expands the release of confidential information from county held records to qualified **out-of-state** entities and **to situations other than an open CPS assessment**.

**A.** The county director shall allow the District Attorney or his designee full access, **except for any substance abuse patient records covered by 42 CFR Part 2**, to the case record as needed to carry out his or her mandated responsibilities that result from a report of confirmed abuse or from the county director's decision not to file a petition.

**B.** When giving or receiving assistance with a case, the agency may share oral or written information with the following:

1. **Law enforcement officers** - when being asked to assist in CPS assessments or when the county director informs them about reports of abuse;
2. **The prosecutor** - when responding to reports of confirmed abuse; or when providing a summary for a review requested because a petition was not filed; or when necessary to carry out his mandated responsibilities;
3. **The court** - when an evaluation report is required for a dispositional hearing or at the time of a scheduled review. [N.C.G.S. § 7B-801](#) enables the court to be open for adjudicatory hearings regarding juveniles unless the judge determines that the court should be closed.
4. **Public and private mental health providers** - when necessary to assist in CPS assessments or CPS In-Home or Out-of-Home services;
5. **Public and private health care providers** - when necessary to assist in CPS assessments or CPS In-Home or Out-of-Home services;
6. **Multidisciplinary teams** - such as the Child and Family Teams, Child Fatality Review Team, the Community Child Protection Team, and the Child Fatality Prevention Team that provide case consultation on child abuse, neglect, dependency, or fatalities. (Other agencies such as Mental Health, the Juvenile Court, and schools have multidisciplinary teams as well);
7. **Institutional staff** - who may be assisting in a CPS assessment or preparing In-Home Family Services Agreements;
8. **School personnel** - when necessary to assist in CPS assessments or service delivery;
9. **DHHS personnel responsible for licensing or approving day care, foster care, group care, or institutional child caring facilities.**
10. **DSS representatives such as Work First and other child welfare programs-** assisting with a CPS assessment or development and provision of CPS In-Home or Out-of-Home Services.

Collaboration with other agencies **to provide for** safety of children is family-centered practice.

### **C. Department of Juvenile Justice and Delinquency**

[N.C.G.S. § 7B-3100](#) and [28 NCAC 01A .0301](#) state that the Department of Juvenile Justice and Delinquency Prevention shall designate local agencies that are authorized to share information concerning juveniles. Agencies so designated shall share with one another, upon request and to the extent permitted by federal law and restrictions, information in their possession that is relevant to any assessment of a report of child abuse, neglect, or dependency or the provision or arrangement of child protective services by a DSS or to any case in which a petition has been filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent and shall continue to do so until the protective services case is closed by the local department of social services, or if a petition is filed when the juvenile is no longer subject to the jurisdiction of the juvenile court. Agencies that may be designated as "agencies authorized to share information" include, but are not limited, to the following:

- Local mental health facilities
- Local health departments
- Local departments of social services
- Local law enforcement agencies
- Local school administrative units
- The district attorney's office
- The Office of Juvenile Justice
- The Office of Guardian ad Litem services.

Any information shared among agencies under this provision shall remain confidential, shall be withheld from public inspection, and shall be used only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile, and shall be released in accordance with the provisions of the Family Educational and Privacy Rights Act. Nothing in this section or any other provision of law shall preclude any other necessary sharing of information among agencies. Nothing herein shall be deemed to require the disclosure or release of any information in the possession of the district attorney.

### **D. Release of confidential information**

When a request for confidential information is received from a federal, State (in or out-of-state), or local government entity or its agent, the county DSS may share information from its record in order to carry out its mandate to protect children. This does not include substance abuse patient records covered under 42 CFR Part 2. It is permissible to inquire about former residences and to seek information from each county's records. The following are situations that would be appropriate for sharing confidential information from the county's records:

1. A request from an in-state or out-of-state DSS with an open child welfare case.

2. A request from an in-state or out-of-state Guardian Ad Litem / CASA with an open child welfare case in the requester's jurisdiction.
3. A request from an in-state or out-of-state law enforcement entity with an open child welfare case or open criminal case resulting from the abuse or neglect of a child(ren).
4. A request from an out-of-state DSS (public child welfare agency) with a juvenile court case (including permanency planning or termination of parental rights (TPR)) resulting from the abuse or neglect of a child(ren).
5. A request from an in-state or out-of-state court or District Attorney that has a criminal case resulting from the abuse or neglect of a child(ren).

Please note that an open child welfare case refers not only to an open CPS assessment but to CPS In-Home or Out-of-Home services as well. **Civil child custody cases between parents or other parties that do not involve child welfare do not apply.**

Requests for information from out-of-state entities may read as requests for information from the central registry of abuse and neglect. When such a request meets the requirements specified above, information from the case record may be shared with the authorized person requesting the information. However, the Central Registry should not be accessed to fulfill that request. Information in the Central Registry may only be released when one of the conditions specified in [10A NCAC 70A .0102\(6\)](#) exists. If the information is requested to comply with Adam Walsh legislation concerning foster and adoptive parents or fitness to care for children employment, use the form [DSS-5268](#) and see the Family Services Manual, Volume I, Chapter VIII, [Section 1427](#) for further information.

Requests for information from the Central Registry must be made using the [DSS-5277](#), Request for Confidential Information Regarding Abuse, Neglect and Dependency form.

### **III. CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE RECORDS**

Alcohol and drug abuse patient records are protected under the federal regulations, [42 CFR Part 2](#) and **cannot** be disclosed or **re-disclosed** without the patient's **written** consent unless otherwise provided for in the regulations. 42 CFR Part 2 allows for substance abuse records to be released without written consent under the following conditions:

- a) To medical personnel to meet a bona fide medical emergency;
- b) To qualified personnel for the purpose of conducting scientific research, audits or program evaluation, and;
- c) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. (See [42 CFR 2.61](#) and follow the instructions outlined for obtaining this order.)

However, no State law may either authorize or compel any disclosure prohibited by the federal regulations. The Guardian Ad Litem's (GAL) general appointment letter does not allow them access to information about the diagnosis or treatment of substance abuse for the child or parent/caretaker. If the GAL does not have a court order explicitly allowing for the release of alcohol or drug abuse patient records for the child or parent/caretaker, those records and any references to them would have to be removed from the record prior to the GAL's review. Please note that a violation of any provision of 42 CFR Part 2 is subject to a criminal penalty, a fine of not more than \$500.00 for the first offense and not more than \$5,000.00 for any subsequent offense.

Consent for Release of Confidential Information, [DSS-5297](#), must be initialed and signed by the patient. The patient must initial on the consent form which information the patient is allowing to be released. If the patient is a juvenile, **both** the juvenile and the juvenile's parent/guardian must initial and sign the consent. If the patient is an incompetent adult, both the adult and the adult's guardian must initial and sign the consent. The patient will need to sign the Consent for Release of Confidential Information, [DSS-5297](#), prior to DSS obtaining any information regarding any assessments for substance abuse/dependency/addiction and any substance abuse treatment that has been provided as a result of the assessment.

Before DSS can disclose any information it has received regarding diagnosis or treatment of substance abuse to the court, to the foster parent or relative caregiver, or any service provider involved with the case, a Consent for Release of Confidential Information, [DSS-5297](#) must be signed by the patient or a court order must be obtained according to the instructions outlined in [42 CFR 2.61](#). Please be aware that the list above is not all inclusive and additional Consents for Release of Confidential Information may need to be obtained. The Consent for Release of Confidential Information should be completed based on the situation at the time it is completed. If the circumstances change, the Consent for Release of Confidential Information should be updated to reflect these changes. For example, if the case is opened for In-Home Services and Juvenile Court is not involved, but a petition is filed during the provision of In-Home Services, then the parent/caretaker should be asked to sign a new consent allowing information to be shared with the parties to the court action, specifically initialing the corresponding purpose.

While 42 CFR Part 2 covers alcohol and drug abuse patient records, it does not cover all substance abuse information that may be obtained in a child protective services record. Examples of information that can be shared would be the child's statement that one of his parents is using drugs or the chemicals and other hazards a child was exposed to in a confirmed methamphetamine laboratory. The following definitions will assist the agency in determining if the information that is being requested is covered by 42 CFR Part 2:

- **Patient:** Any individual who has applied for or been given diagnosis or treatment for alcohol or drug use at a federally assisted program and includes any individual who, after arrest on a criminal charge, is identified as an alcohol or drug abuser in order to determine that individual's eligibility to participate in a program.
- **Record:** Any information, whether recorded or not, relating to a patient received or acquired by a federally assisted alcohol or drug program.
- **Treatment:** The management and care of a patient suffering from alcohol or drug abuse, a condition which is identified as having been caused by that abuse, or both, in order to reduce or eliminate the adverse effects upon the patient.

#### **IV. EXAMINATION OF THE CASE RECORD**

The court may order the sharing of information among such public agencies as the court deems necessary to reduce the trauma to the victim ([N.C.G.S. § 7B-2901](#)). The county director shall not allow anyone outside the county department of social services to directly examine the protective services case records, except under the following circumstances:

- A.** Federal and State personnel shall have access to the case record when carrying out their lawful responsibilities for program audit, review, and evaluation. See Section II above.
- B.** The child and his/her guardian ad litem shall have access to the child's record upon request. The child's attorney who has been employed to represent the child in a court hearing, and who has a specific need to see the case record in order to prepare the case, may have access to the record. Adults who were found to be abused, neglected, or dependent as children and who have child protective services records may view their CPS record. The county director must document the examination by the victim child (or victim who is now adult), the guardian ad litem, or the attorney. The county director has a right to withhold from examination any materials which are not related to protective services for the child. For example, the identity of the reporter and confidential materials specific to persons other than the victim child must be removed from the case record prior to examination by the child or child victim who is now an adult. When such materials are withheld, the child or his attorney must be informed.
- C.** The agency attorney shall have access to the case record when helping the agency prepare for and present its case in court or when advising on a case.
- D.** The prosecutor will have access to the case record when carrying out his or her mandated responsibilities. When law enforcement investigates a CPS case on behalf of a prosecutor, they shall be given access.
- E.** Persons other than those identified shall examine a case record only when they have an order from a judge. When a person claims to have such authorization, he or she should have a written order signed by the judge. If a written judge's order cannot be produced, the director may allow access only after verifying the oral order with the judge or another

person who would have firsthand knowledge of the order. Documentation of the written or oral order must be entered into the case record.

F. The agency, through its attorney, may make a motion to the court to limit access to all or part of the case record. The agency attorney should be consulted in advance on the appropriate procedures to follow in such situations.

G. Release of the Name of the Reporter

Due to the reporter's potential vulnerability to actions by the alleged perpetrator, the name of the reporter should be protected to the fullest extent possible. The reporter's identity may be divulged only under the following conditions:

1. By specific order of the court to release the identity of the reporter; or
2. By decision of the agency director, the reporter's name, address, and telephone number may be shared with the district attorney or law enforcement when the sharing of such information is necessary for the performance of their duties; or
3. By decision of the agency director, identifying information about the reporter may be shared orally with an individual or investigative team that has mandated authority to conduct a criminal investigation into allegations of criminal abuse; (e.g., in an SBI child care investigation of sexual abuse).

**NOTE: Any information about the diagnosis or treatment of substance abuse must be removed from the case record prior to review unless there is a valid Consent for Release of Confidential Information signed by the patient or a court order that has been obtained following the instructions outlined in 42 CFR 2.61. Refer to Children's Services Manual, Volume 1, Chapter The Juvenile Court and Child Welfare for further information regarding 42 CFR 2.61 and the procedures for obtaining this court order.**

#### **IV. DISCLOSURE IN CHILD FATALITY OR NEAR FATALITY CASES (N.C.G.S. § 7B-2902)**

N.C. G.S. § 7B-2902 states that if a child dies, or is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or dependency **and** the person responsible for the fatality or near fatality is charged in the incident (or would have been charged were it not for that person's prior death), the DSS shall prepare a written summary for public release that includes:

- The dates, outcomes, and results of any actions taken or services rendered;

- The results of any review by the State Child Fatality Prevention Team, a local child fatality prevention team, a local CCPT, the Child Fatality Task Force, the State Child Fatality Review Team, or any public agency;
- Confirmation of the receipt of all reports accepted or not accepted by the DSS for an assessment of suspected child abuse, neglect, or maltreatment. This includes the results of the assessments, a description of services rendered, and a statement of the basis for the department's decision.

Within 5 working days from the receipt of a request for findings and information, the agency shall consult with the appropriate District attorney and provide the findings unless the agency has reasonable belief that release of the information:

- Is not authorized under sections (a) and (b) of [N.C.G.S. § 7B-2902](#);
- Is likely to cause mental or physical harm or danger to a minor child living in the deceased or injured child's household;
- Is likely to jeopardize the state's ability to prosecute the defendant;
- Is likely to jeopardize the defendant's right to a fair trial;
- Is likely to undermine an ongoing or future criminal investigation; or
- Is not authorized by federal law and regulations.

For further information on handling child fatalities, see [Chapter VIII, Section 1432](#) of the Children's Services Manual.